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October 20, 2022


VIA ECF

Jennifer L. Rochon, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street, Room 20B
New York, New York 10007

In light of Defendants' consent to the filing of the Amended Complaint, Plaintiffs' application for leave to file an Amended Complaint is GRANTED. The parties shall comply with all further deadlines. Should the parties seek an extension of any deadline, they shall comply with the Court's Individual Rule 1F.

Dated: October 20, 2022
New York, New York

SO ORDERED


JENNIFER L. ROCHON
United States District Judge

RE: *Avantgarde Senior Living et al. v. GoFund LLC et al.*, 22-cv-04313 (JLR)

Parties' Joint Letter In Response To Your Honor's Order to Show Cause

Dear Judge Rochon:

The parties in the above-referenced matter, by and through their undersigned counsel, respectfully submit this joint letter in response to Your Honor's Order to Show Cause, dated October 13, 2022 [DE 52]. Defendants have consented to the filing of the Amended Complaint, [DE 45], and join Plaintiffs in submitting this letter to show good cause for why the Amended Complaint should not be dismissed.

First, the Parties apologize for misconstruing the Court's Case Management Plan ("CMP"). When the Parties entered into the present CMP and selected September 30, 2022, as the deadline to file leave with the Court to amend the Complaint, counsel for Plaintiffs told counsel for Defendants they intended to amend the pleadings by that date. The Parties recognized amendment by consent was agreeable and preferable in order to allow Plaintiffs to correct the parties to this Action to those persons and entities that Plaintiffs believe to be the proper defendants. This Action involves suit against a merchant cash advance ("MCA") company. Plaintiffs' contract at issue in this litigation was with an entity named Penn Capital Funding. The initial email and contract came from a company named MapCap, LLC. Plaintiffs allege that MapCap, LLC has previously issued MCA agreements under the name GoFund. Hence, the reasoning for the initial pleading.

After filing suit against MapCap, GoFund and its alleged owner, Moishe Katz, Plaintiffs agreed to dismiss all three defendants without prejudice based on Defendants' representation that they were not involved in the transaction but were merely conduits to the transaction. [DE 34].

Plaintiffs' counsel has since discovered evidence that another entity, HMFCG, Inc., was also doing business as Penn Capital Funding during the relevant time period, and it is this entity that appears to be the appropriate MCA company to be named in this Action. Based on their investigation to date, Plaintiffs believe the evidence will show that Jonathan Braun managed the

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affairs of the Enterprise through Defendants Brezel and Deutsch while he was briefly in federal prison before having his sentence commuted by former President Trump. Defendants take no position on whether the evidence will support these allegations or whether Braun is a proper party to this action.

For the reasons stated herein, Plaintiffs respectfully request leave to file the Amended Complaint nunc pro tunc. Defendants consent to the filing of the Amended Complaint. If allowed, the parties will seek to amend the CMP to accommodate the addition of the new parties once served and counsel files an appearance. In the meantime, the parties will continue with discovery as required under the present CMP.

The parties respectfully thank the Court for its consideration of this request.

Respectfully submitted,

WHITE AND WILLIAMS LLP

/s/ Shane R. Heskin
Shane R. Heskin, Esq. (*Attorneys of Plaintiffs*)

WELLS LAW P.C.

/s/ Steven W. Wells
Steven W. Wells, Esq. (*Attorneys for Defendants*)